

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GUILLERMO TRUJILLO CRUZ,

Plaintiff,

v.

M. HUERTA, et al.,

Defendants.

No. 1:20-cv-01073-DAD-BAM (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS

(Doc. Nos. 4, 6, 10)

Plaintiff Guillermo Trujillo Cruz is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On August 28, 2020, the assigned magistrate judge issued findings and recommendations, recommending that plaintiff not be allowed to proceed *in forma pauperis* and instead be directed to pay the required filing fee in full if he wishes to proceed with this action because: (1) he is subject to the three strikes bar under 28 U.S.C. § 1915(g); and (2) the allegations in his complaint do not satisfy the “imminent danger of serious physical injury” exception to § 1915(g). (Doc. No. 6.) Those findings and recommendations were served on plaintiff and contained notice that any objections thereto were to be filed within fourteen (14) days from the date of service. (*Id.*) After an extension of time, on September 21, 2020, plaintiff’s timely-filed objections were docketed. (Doc. No. 13.)

1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
 2 *de novo* review of this case. Having carefully reviewed the entire file, including plaintiff's
 3 objections (Doc. No. 13), the court finds the findings and recommendations to be supported by
 4 the record and by proper analysis.

5 The pending findings and recommendations found that plaintiff has received dismissal
 6 orders that count as strikes under 28 U.S.C. § 1915(g) on at least three prior occasions:
 7 (1) *Trujillo v. Sherman*, No. 1:14-cv-01401-BAM (E.D. Cal. Apr. 24, 2015), *aff'd*, No. 15-15952
 8 (9th Cir. May 6, 2016), which was dismissed for failure to state a claim; (2) *Cruz v. Gomez*, No.
 9 1:15-cv-00859-EPG (E.D. Cal. Feb. 3, 2017), *aff'd*, No. 17-15358 (9th Cir. Oct. 25, 2017), which
 10 was dismissed for failure to state a claim; and (3) *Trujillo v. Gonzalez-Moran*, Case No. 17-15200
 11 (9th Cir. Aug. 21, 2017), which was dismissed as frivolous. As the magistrate judge correctly
 12 concluded, plaintiff is therefore subject to the three-strikes provision and may only proceed *in*
 13 *forma pauperis* if he is able to satisfy the imminent danger exception of 28 U.S.C. § 1915(g).

14 The findings and recommendations' concluded that plaintiff was not in imminent danger
 15 of serious physical injury at the time he filed the complaint in this action because plaintiff did not
 16 "allege he was in any imminent danger of serious physical injury at the time the complaint was
 17 filed, because he was not housed at the institution where the violations allegedly occurred."
 18 (Doc. No. 6 at 2.) In his pending objections, plaintiff asserts that he has shown proof of his
 19 indigency status for the past eight years and describes circumstances he believe meet the
 20 imminent danger exception. (Doc. No. 13 at 1–3.) These appear to be the same circumstances
 21 the pending findings and recommendations addressed, and nothing further is provided that
 22 persuasively rebuts the assigned magistrate's conclusion. Thus, the imminent danger exception to
 23 § 1915(g)'s three-strikes bar does not apply here, and plaintiff is unable to proceed *in forma*
 24 *pauperis* in this action.

25 Accordingly,

- 26 1. The findings and recommendations issued on August 28, 2020 (Doc. No. 6), are
- 27 adopted in full;
- 28 2. Plaintiff's applications to proceed *in forma pauperis* (Doc. Nos. 4, 10), are denied;

3. Within thirty (30) days from the date of service of this order, plaintiff is required to pay in full the \$400.00¹ filing fee for this action;
4. Plaintiff's failure to pay the required filing fee as ordered will result in the dismissal of this action without prejudice; and
5. This case is referred back to the assigned magistrate judge for further proceedings consistent with this order.

IT IS SO ORDERED.

Dated: **March 11, 2021**


UNITED STATES DISTRICT JUDGE

¹ As of December 1, 2020, the civil case filing fee has been raised from \$400 to \$402; however, because plaintiff filed prior to this change, he is permitted to file at the rate he would have otherwise been required to pay at the time of filing. *See Fee Schedule*, U.S. Dist. Ct. for E.D. Cal., <http://www.caed.uscourts.gov/caednew/index.cfm/attorney-info/fee-schedule/?keywords=filing>; *see also Changes to Miscellaneous Fee Schedules*, U.S. Dist. Ct. for E.D. Cal., <http://www.caed.uscourts.gov/caednew/index.cfm/news/amendments-to-the-federal-rules-of-practice-and-procedure/>.